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April 12, 1956
Opinion No. 56-85

REQUESTED BY: Honorable Laura McRae, State Legislator

OPINION BY: Robert Morrison, The Attorney General
Gordon Aldrich, First Assistant Attorney General

QUESTION: May a legislator hold an office or be employed by a municipality as a member of the City Planning and Zoning Commission when such office is served without pay?

CONCLUSION: No.

Article 4, Part 2, Section 4, of the Arizona Constitution, provides that no person holding any public office of profit or trust under the authority of the United States, or of this State, shall be a member of the Legislature. Those holding appointment in the state militia and as notaries public, justices of the peace, United States Commissioners and postmasters of the fourth class are specifically excluded from the prohibition of this Act.

Article 4, Part 2, Section 5, of the Arizona Constitution, provides that no member of the Legislature, during the term for which he shall have been elected or appointed, shall be eligible to hold any other office or be otherwise employed by the State of Arizona, or any county or incorporated city or town thereof. There is excepted from this latter prohibition the office of school trustee and the employment as teacher in the public school system.

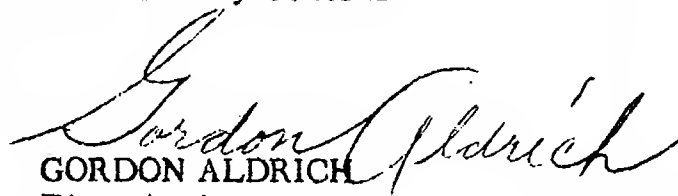
It was formerly held in Winsor vs. Hunt, 29 Ariz. 504, a case decided in 1926, that the President of the Senate could be employed as a clerical assistant to the Code Commissioner because such employment was not "a civil office of profit or trust." However, the pertinent section of the Constitution has been changed to include the word "employed." Thus, a legislator is not eligible to employment by the State or any incorporated city or town or of any county thereof. In McCluskey vs. Hunter, 33 Ariz. 513, where the Supreme Court was called upon to interpret a statute patterned after Article 4, Part 2, Section 5, the Supreme Court held that the acceptance of the later office, even though without remuneration, operated as a vacation of the former office. The Court in the McCluskey case cited with approval Campbell vs. Hunt, 18 Ariz. 442, where the holding was that the occupant of an office who accepts a second office when prohibited by law from doing so ipso facto vacates the first one.

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It is the opinion of the Department of Law, therefore, that a state legislator is not eligible to hold either office or employment in the State of Arizona or any county or any incorporated city or town of Arizona with the exceptions noted above for school teachers and school trustees. This conclusion is supported by a previous opinion of the Attorney General, No. 53-26L.

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